

REMARKS

Favorable reconsideration of this application is respectfully requested, as amended. Claims 1 and 3-21 are currently pending.

Applicants kindly acknowledge the statement at page 3 of the Office Action that the prior rejection of Claims 1, 7-13, 16 and 18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,143,946 to Docter (Dokter '946) has been withdrawn.

Applicants further kindly acknowledge the statement at page 3 of the Office Action that the prior rejection of Claims 1 and 11-20 under 35 U.S.C. § 102(b) as being anticipated by Phybiosis Medicinal Clay Technical Specifications 1999 (Phybiosis Medicinal Clay) has also been withdrawn.

Claim 1 has been amended to change the preamble from "a combination of naturally occurring elements" to "a combination providing a therapeutic benefit." Support for this amendment can be found in paragraph [0012] at page 4 of the specification. Claim 1 has also been amended to delete "pearl" from the listing of elements in the first and second groups.

Claim 2 has been rewritten as new Claim 21, and has been further amended to recite "a combination providing a therapeutic benefit" similar to amended Claim 1.

A. Response to Rejection of Claims 1-6 under 35 U.S.C. § 101 as Being Directed to Non-Statutory Subject Matter

At pages 2-3 of the Office Action, Claims 1-6 (now Claims 1, 3-6 and 21) have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Office Action alleges that Claim 1 is drawn to a product which is a "naturally occurring element combination" and that the Examiner interprets "naturally occurring element combination" to mean a "mixture that is found in nature."

Again, what the Office Action alleges is meant by this phrase in Claim 1 is a misreading of what was intended by Applicants. It was never the intention in Claim 1 to cover a "mixture that is found in nature." Instead, Applicants intended Claim 1 to cover a combination of naturally occurring elements that is not "found in nature." In fact, the combination recited in Claim 1, as well as the remaining Claims, does not exist in nature.

Nonetheless, the preamble of Claim 1 (as well as the preamble of new Claim 21) has again been amended to recite "a combination providing a therapeutic benefit" which

comprises at least one naturally occurring element selected from each of the first group and the second group. Again, this combination of at least one naturally occurring element selected from each of the first group and the second group, as defined in Claims 1, 3-6 and 21, is not found in nature.

For at least the foregoing reasons, this rejection of Claims 1, 3-6 and 21 under 35 U.S.C. § 101 has been overcome.

B. Response to Rejection of Claims 1, 3, 7-10, 16 and 18 under 35 U.S.C. § 102(b) as Anticipated by Ridgely *et al.* '138

At page 4 of the Office Action, Claims 1, 3, 7-10, 16 and 18 have again been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,378,138 to Ridgely *et al.* (Ridgely *et al.* '138).

Briefly, Ridgely *et al.* '138 discloses stocking or hosiery that incorporates naturally occurring elements for healing various bodily ailments. These naturally occurring elements may include Alexandrite, Amazonite, amber, Amethyst, Aquamarine, Aventurine, Azurite, Bloodstone, Calcite, Carelian, Celestite, Chrysoprase, Citrine, Diamond, Diopase, Emerald, Fluorite, Garnet, Gold, Hematite, Herkimer Diamond, Jade, Jasper, Kunzite Pink, Lapis Lazuli, Lepidolite, Malachite, Moonstone, Obsidian, Onyx, Opal, Peridot, Pyrite, Quartz Crystal, Rhodochrosite, Rhodonite, Rose Quartz, Ruby, Rutilated Quartz, Smoky Quartz, Sugilite, Sodalite, Sapphire, Silver, tiger Eye, Topaz, Tourmaline, Turquoise, and Zircon. See col. 2, lines 14-28.

This rejection is again respectfully traversed with respect to Claims 1, 3, 7-10, 16 and 18, as amended and as currently presented. As amended, Claim 1 recites a combination comprising: (1) at least one naturally occurring element selected from a first group consisting of charoite, rubellite, rubellite with quartz, and rhyolite; and (2) at least one naturally occurring element selected from a second group consisting of alexandrite, amazonite, amber, amethyst, aquamarine, aventurine, azurite, bloodstone, calcite, carelian, celestite, chrysoprase, citrine, copper, diamond, diopase, emerald, fluorite, garnet, gold, hematite, Herkimer diamond, jade, jasper, kunzite pink, lapis lazuli, lepidolite, malachite, manganese, moonstone, moss agate, obsidian, onyx, opal, peridot, pyrite, quartz crystal, rhodochrosite, rhodonite, rose quartz, ruby, rutilated quartz, smoky quartz, sugilite,

sodalite, sapphire, silver, tiger eye, topaz, tourmaline, turquoise and zircon. (Emphasis added.)

By contrast, Ridgely *et al.* '138 does not teach or suggest at least one naturally occurring element from the first group of Claim 1, with at least one naturally occurring element from the second group of Claim 1. In fact, Ridgely *et al.* '138 does not teach any of the elements from the first group of Claim 1, including rubellite.

Instead, the Office Action alleges that "tourmaline" is "just another term for rubellite." But the Office Action nowhere shows where the art teaches that "tourmaline" is also referred to as "rubellite." In fact, other art cited in the Office Action suggests that "tourmaline" and "rubellite" are entirely different gem stones. See column 4, line 51, of U.S. Patent 6,145,341 (Leong). See also column 2, lines 33-35 of U.S. Patent 4,857,306 (Roller). In fact, the allegation that "tourmaline" is "just another term for rubellite" appears to be based on the Examiner's personal knowledge. Accordingly, if the Examiner wishes to persist in alleging that "tourmaline" is "just another term for rubellite," Applicants respectfully request that he provide an affidavit/declaration under 37 CFR 1.104(d)(2) because this allegation appears to be based on personal knowledge, and not what is taught by the art relied on in the Office Action.

For at least the foregoing reasons, Claims 1, 3, 7-10, 16 and 18, as amended or as currently presented, are novel and unobvious over Ridgely *et al.* '138.

C. Response to Rejection of Claims 1, 3-8, and 11 under 35 U.S.C. § 102(b) as Anticipated by Leong '341

At page 5 of the Office Action, Claims 1, 3-8, and 11 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,145,341 to Leong (Leong '341).

Briefly, Leong '341 discloses a mating jewelry item which includes a first stand-alone jewelry piece including a first gem part which has been cut along a separation line from a gemstone, a first jewelry holder secured with the first gem part for holding the first jewelry piece on a support such that the first outer surface and the first mating surface are exposed and visible; a second stand-alone jewelry piece including a second gem part which has been cut from the same gemstone; and a second jewelry holder secured with the second gem part for holding the second jewelry piece on a support such that the second outer surface and the second mating surface are exposed and visible; wherein the second mating

surface is complementary to the first mating surface for mating therewith such that the naturally-occurring markings on the first and second outer surfaces can only match with each other (emphasis added). See abstract and column 1, line 66 through column 2, line 22.

This rejection is respectfully traversed with respect to Claims 1, 3-8, and 11, as amended and as currently presented. Contrary to what is alleged in the Office Action, Claim 3 of Leong '341 does not "anticipate combinations of rubellite and tourmaline." In fact, Claim 3 relied on in the Office Action does not even recite selecting combinations of gem stones, only selecting one gem stone from a Markush group listing of gem stones. In addition, nowhere does Leong '341 teach or suggest using combinations of these gem stones. Instead, Leong '341 teaches using first and second gem parts cut from same gem stone, not different gem stones. See, for example, column 2, line 11.

For at least the foregoing reasons, Claims 1, 3-8, and 11, as amended or as currently presented, are novel and unobvious over Leong '341.

D. Response to Rejection of Claims 1, 11-13, and 15 under 35 U.S.C. § 102(b) as Anticipated by Derwent-Acc-No: 1990-140052 Abstracting CN 1033154

At page 6 of the Office Action, Claims 1, 11-13, and 15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Derwent-Acc-No: 1990-140052 which abstracts CN 1033154 (Derwent 1990-140052).

The Office Action alleges that Derwent 1990-140052 discloses an eye drop composition comprising pearl, silver, abalone shell, mirabilite and water. The Office Action further alleges that "eye drops" are interpreted to mean a composition capable of being applied to the body.

Responsive to this rejection, Claim 1 has been amended to delete "pearl" from the listing of elements in the first and second groups. None of the other elements listed in this first group (charoite, rubellite, rubellite with quartz, and rhyolite) are taught by Derwent 1990-140052. In addition, Claims 11-13 and 15 ultimately depend from amended Claim 1 which is now distinguishable over Derwent 1990-140052.

For at least the foregoing reasons, Claims 1, 11-13, and 15, as amended, are novel and unobvious over Derwent 1990-140052.

E. Response to Rejection of Claims 1 and 13-15 under 35 U.S.C. § 102(b) as Anticipated by Derwent-Acc-No: 2000-148175 Abstracting CN 1235834

At page 6 of the Office Action, Claims 1 and 13-15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Derwent-Acc-No: 2000-148175 which abstracts CN 1235834 (Derwent 2000-148175).

The Office Action alleges that Derwent 2000-148175 discloses pearl water for health care made by adding 0.1-1% soluble pearl powder into drinking water that also contains 13 kinds of amino acids and 28 kinds of trace elements. The Office Action further alleges that this composition is interpreted to read upon an ingestible beverage that when consumed provides health benefits with the combination of pearl and 28 kinds of trace elements.

Responsive to this rejection, Claim 1 has been amended to delete “pearl” from the listing of elements in the first and second groups. None of the other elements listed in this first group (charoite, rubellite, rubellite with quartz, and rhyolite) are taught by Derwent 2000-148175. In addition, Claims 13-15 ultimately depend from amended Claim 1 which is distinguishable over Derwent 2000-148175. The Office Action also nowhere properly points out, as required by 37 CFR 1.104(c)(2), how the 28 kinds of trace elements taught by Derwent 2000-148175 correspond to any of the elements listed in the first or second groups.

For at least the foregoing reasons, Claims 1 and 13-15, as amended, are novel and unobvious over Derwent 2000-148175.

F. Response to Rejection of Claims 1, 16, and 19-20 under 35 U.S.C. § 103(a) as unpatentable over Derwent-Acc-No: 1990-140052 Abstracting CN 1033154

At page 7 of the Office Action, Claims 1, 16, and 19-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Derwent 1990-140052.

The Office Action concedes that Derwent 1990-140052 does not disclose a method of treating an individual in need of vibrational therapy (Claim 16) or a kit including the combination of Claim 1 and instructions for using same to treat an individual in need of vibrational therapy (Claims 19-20). Instead, the Office Action alleges that it would have been obvious to treat individuals in need of vibrational therapy with a kit including the composition taught by Derwent 1990-140052. The alleged “motivation” is “because all

individuals can benefit from vibrational therapy, including those in need of eye drops for better overall health.”

Applicants respectfully traverse this rejection of Claims 1, 16, and 19-20, as amended, for reasons previously presented as to why amended Claim 1 is novel and unobvious over Derwent 1990-140052, and for the following additional reasons. This rejection is *prima facie* improper because the Office Action has failed to allege any proper motivation based on the art relied on for why one skilled in the art would use the eye drops of Derwent 1990-140052 in vibrational therapy. Derwent 1990-140052 says nothing about what disease states, therapies, *etc.*, these eye drops may be used in or for. In particular, nothing in Derwent 1990-140052 teaches or suggests that these eye drops should be or even could be used in treating individuals in need of vibrational therapy, as defined in Claims 16 and 19-20. The allegations and suggestions in the Office Action that these eye drops could be used to treat individuals in need of vibrational therapy is simply unsupported speculation which is not taught at all by the art relied on.

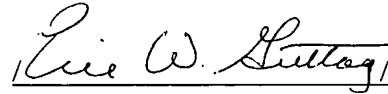
Accordingly, Claims 1, 16, and 19-20, as amended, are unobvious over Derwent 1990-140052.

G. Conclusion

Claims 1 and 3-21, as amended or as currently presented, define statutory subject matter under 35 U.S.C. § 101. Claims 1 and 3-21, as amended or as currently presented, are also novel and unobvious over the art relied on in the Office Action. Accordingly, Claims 1 and 3-21, as amended or as currently presented, are in now condition for allowance.

If the Examiner has any questions or concerns regarding the present response, the Examiner is invited to contact Eric W. Guttag at 513-856-7272.

Respectfully submitted,

A handwritten signature in cursive script, reading "Eric W. Guttag", written in black ink.

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